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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION
OF TUCSON ELECTRIC POWER
COMPANY FOR APPROVAL OF ITS
STRANDED COST RECOVERY

DOCKET NO.: E-01933A-98-0471

IN THE MATTER OF THE FILING OF
TUCSON ELECTRIC POWER COMPANY
OF UNBUNDLED TARRIFFS PURSUANT
TO A.A.C. R14-2-1601 et seq.

DOCKET NO.: E-01933A-97-0772

IN THE MATTER OF COMPETITION IN
THE PROVISIONS OF ELECTRIC
SERVICES THROUGHOUT THE STATE
OF ARIZONA.

DOCKET NO.: RE-00000C-94-165

IN THE MATTER OF THE APPLICATION
OF ARIZONA PUBLIC SERVICE
COMPANY FOR APPROVAL OF ITS
PLAN FOR STRANDED COST
RECOVERY

DOCKET NO.: E-01345A-98-0473

IN THE MATTER OF THE FILING OF
ARIZONA PUBLIC SERVICE COMPANY
OF UNBUNDLED TARIFFS PURSUANT
TO A.A.C. R14-2-1601 et seq.

DOCKET NO.: E-01345A-97-0773

NOTICE OF FILING

M-S-R Public Power Agency hereby files its comments in the above-captioned consolidated dockets.

RESPECTFULLY SUBMITTED this 30 day of November, 1998.

By:

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1 Original and ten copies of the
2 foregoing filed this 30th day
of November, 1998 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
Phoenix, Arizona 85007

6 A copy of the foregoing was
7 mailed this 30th day
of November, 1998 to:

8 All parties on the service list for
9 Docket No. E-01933A-98-0471

10 By Steven C. Gross/ap

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Nov 30 11 55 AM '98

DOCUMENT CONTROL

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DOCKET NO.: E-01345A-97-0773

COMMENTS OF M-S-R PUBLIC
POWER AGENCY

M-S-R Public Power Agency ("M-S-R"), Intervenor in the above-captioned consolidated dockets, hereby submits the following comments.

I. Background

M-S-R is a public joint exercise of powers agency duly organized and existing under the laws of the State of California, whose members are the Modesto Irrigation District, California,

1 the City of Santa Clara, California and the City of Redding, California. M-S-R's principal office
2 is located in Modesto, California. M-S-R and Tucson Electric Power Company ("TEP") are two
3 of the owners of the San Juan Generating Station ("SJGS"), a four unit coal-fired steam electric
4 generating plant located near Farmington, New Mexico. M-S-R currently owns 28.8% of Unit
5 No. 4 and 8.7% of the Plant Common and TEP currently owns 50% of Unit No.1 and 50% of
6 unit No. 2 and 19.8% of the Plant Common. M-S-R also owns a portion of the high voltage
7 transmission system in Arizona, to wit, an 11.5% interest in the 500 kV Mead-Phoenix
8 Transmission Project, managed by the Salt River Project ("SRP"), and constructed under an
9 authority granted by the ACC.

10 **II. Agreements Between M-S-R and TEP**

11 **A. Sale of Option Agreement**

12 M-S-R and TEP entered into the Sale of Option Agreement on November 29, 1982.
13 Pursuant to this Agreement, M-S-R purchased TEP's option to acquire up to a 28.8% ownership
14 interest in Unit No. 4 of the SJGS. In addition, pursuant to the Sale Of Option Agreement TEP
15 has a continuing duty to represent and protect M-S-R's interests in the SJGS. Any arrangement
16 by which TEP divests itself of its interests in the SJGS must include provisions that do not impair
17 TEP's existing contractual obligations and which adequately protect M-S-R's interests.

18 **B. Interconnection Agreement**

19 M-S-R and TEP entered into the "Interconnection Agreement between Tucson
20 Electric Power Company and M-S-R Public Power Agency, executed on September 20, 1982
21 ("Interconnection Agreement"), under which TEP provides M-S-R with certain electric utility
22 services. The Interconnection Agreement is absolutely vital and integral to M-S-R, as it provides
23 the transmission path for delivery of SJGS capacity to M-S-R's members.

24 Pursuant to Service Schedule D, Power Exchange Agreement, of the Interconnection
25 Agreement ("Service Schedule D"), TEP has agreed to accept up to 150 MW of generation at San
26 Juan from M-S-R and provide M-S-R with an equal amount of generation at locations of M-S-R's
27 choice, including the Palo Verde Switchyard, Westwing Substation and Moenkopi Substation.
28 TEP has agreed to provide this service at no on-going cost to M-S-R and M-S-R will not be

1 subject to charges for transmission losses that TEP may accrue as a result of providing this pre-
2 paid service.¹ The term of this service extends through April 30, 2025.

3 This service has great value to M-S-R, as it provides the sole means for M-S-R to deliver
4 its San Juan power across western New Mexico and eastern Arizona for the delivery to California.
5 Further, the value of this service is greater than if conventional transmission service were
6 purchased to deliver the power, as no losses are incurred for this service and the service can not
7 be terminated during the current economic life of the SJGS. Finally, TEP cannot refuse to
8 perform under Service Schedule D due to transmission limitations within Arizona or upon the
9 TEP transmission system. This particular characteristic further makes the arrangement superior
10 to any available transmission service. M-S-R intends to enjoy the benefits of Service Schedule
11 D for the economic life of M-S-R's generating assets in New Mexico.

12 Pursuant to Service Schedule E, Reserve Sharing, of the Interconnection Agreement
13 ("Service Schedule E"), M-S-R and TEP have agreed to share capacity between their ownership
14 interests in the SJGS for scheduling purposes. Pursuant to Service Schedule E, M-S-R assigns
15 one-half of its scheduling rights in San Juan Unit 4 to TEP and, in exchange, TEP assigns a like
16 amount of scheduling right to M-S-R from TEP's interests in San Juan Unit 1 and San Juan Unit
17 2. M-S-R's rights are spread equally between both units. The arrangement extends through the
18 life of Unit No. 4 of the SJGS and can be terminated by either party by three years' advance
19 written notice.

20 The value of this arrangement to M-S-R is that its risk of losing its total generation
21 entitlement at San Juan curtailment is virtually eliminated. As a result, the amount of operating
22 reserves necessary to support its generation is reduced, which reduces M-S-R's overall cost of
23 providing power to its member utilities. Similarly, this arrangement currently mitigates a portion
24 of TEP's risk of loss of SJGS generation due to curtailments.

25 The continuation of this service is beneficial to M-S-R and TEP. Upon termination of this
26 Service Schedule, M-S-R would likely seek to find an equivalent arrangement in order to reduce

27 ¹ The "pre-payment" for this service was negotiated as part of the Sale of Option Agreement. The
28 current value of the pre-payment is estimated at \$13,900,000.

1 the cost associated with providing operating reserves. However, it may be difficult to find a
2 relationship that would meet M-S-R's needs, as well as those services provided by TEP under
3 Service Schedule D.

4 **III. Settlement Agreement Between the Arizona Corporation Commission and TEP**

5 The effect of the Settlement Agreement between the Staff of the Arizona Corporation
6 Commission and TEP ("Settlement Agreement") on M-S-R's rights, as described above, in the
7 various agreements between M-S-R and TEP is unclear and unknown. The confusion is at least
8 in part due to the use of numerous terms undefined in the documents served on the parties. For
9 example, pursuant to Section VIII of the Settlement Agreement and the Memorandum of
10 Understanding between Arizona Public Service Company ("APS") and TEP ("MOU") attached
11 thereto, TEP may acquire the non-distribution related transmission assets (the "Transmission") of
12 APS. It appears that TEP will transfer the Transmission to Transco, yet "Transco" is undefined.
13 So it is unclear who or what is acquiring the Transmission and other transmission facilities.
14 Further, there is no statement in the Settlement Agreement as to whether TEP's obligations to
15 provide transmission services to M-S-R (and perhaps to others) will also be transferred to Transco
16 or how those obligations will be met. This issue should be clarified.

17 There is also significant discussion of "Committed Uses" and "All Committed Uses" in
18 the Settlement Agreement, yet the terms are undefined. The statements that, "The definition of
19 All Committed Uses (existing or contemplated) supported by TEP will be explained to the ACC's
20 satisfaction." (Page 6 of the Settlement Agreement) and that, "TEP will not transfer any
21 Committed Uses with its generation divestiture." (Page 7 of the Settlement Agreement.) are not
22 helpful. It is unclear whether M-S-R's rights with respect to Service Schedules D and E to the
23 Interconnection Agreement are "Committed Uses" within the meaning of the Settlement
24 Agreement.

25 In the brief time given to review the Settlement Agreement, M-S-R has identified a
26 number of issues and concerns regarding the proposed "Transco," including uncertainty as to its
27 authority, duties and scope of operations. It is reasonably foreseeable that certain of M-S-R's
28 interests and rights may become impaired through the establishment of the proposed "Transco."

1 Some of the specific concerns identified to date include those described in the following
2 paragraphs.

3 The proposed "Transco" must essentially assume all obligations of TEP with respect to
4 Service Schedule D without change, otherwise the balance of benefits and burdens negotiated by
5 M-S-R and TEP in that agreement will be impaired. The ACC has previously addressed this
6 issue, wherein the benefits ascribed to TEP were allocated between TEP's ratepayers and
7 shareholders. Although the benefits to M-S-R ascribed in this transaction did not, and do not, fall
8 under the jurisdiction of the ACC, the ACC can not take action interfering with or impairing M-
9 S-R's contractual rights.

10 M-S-R is concerned that the quality of service provided by TEP acting as the proposed
11 "Transco" to M-S-R under Service Schedule D may be impaired by TEP's divestiture of its
12 generation assets and attendant loss of direct operational control. Service Schedule D provides
13 for the delivery of firm power, without loss, at all times, and without interruption, pursuant to M-
14 S-R's schedules. Such quality of service is dependent on stable transmission system operation
15 and prudent and careful balancing of loads, resources, and power flows. M-S-R expects that the
16 ACC will ensure that the Transco has sufficient authority to operate the transmission system and
17 control the dispatch of generation and import of power without prejudice to holders of existing
18 contractual rights and without effect on the owners of other transmission links, such as the Mead-
19 Phoenix Transmission Project, connecting the Arizona grid to the remainder of the WSCC system.

20 It is contemplated in Section VIII of the Settlement Agreement that transmission owned
21 by parties other than APS will be transferred to the Transco. Although the parties such as SRP,
22 which own such transmission, are specifically listed in Section VIII of the Settlement Agreement,
23 other parties, such as M-S-R, which own major transmission facilities in Arizona, must not be
24 ignored. The proposed terms and conditions of all such transfers are not addressed in the
25 Settlement Agreement. Any order by the ACC must contain provisions clearly stating that the
26 arrangement between TEP and APS is not to be considered as precedent for any other similar
27 arrangements or transfers and that any other similar arrangements or transfers must be considered
28 on their facts, circumstances and merits.

1 Rate design for the "license plate" or "postage stamp" rates contemplated under Section
2 VIII of the Settlement Agreement must not discriminate against the parties to existing
3 transmission service contracts, such as Service Schedule D, or against the owners of any
4 transmission facilities which may be transferred to the Transco. The parties to such contracts and
5 the owners of such facilities entered into or constructed them with the expectation of continuous
6 and economic service for the delivery of power and energy for the benefit of their customers and
7 ratepayers and must neither suffer any additional costs nor any degradation of service due to the
8 operation of the Transco. The ACC must also note that these rates may fall with the jurisdiction
9 of the FERC and the ACC should be prepared to support these nondiscriminatory principles in
10 any necessary and appropriate FERC filings.

11 Any ACC order establishing the auction protocols contemplated in Section VII of the
12 Settlement Agreement for the disposition of TEP's generation assets, including the SJGS, must
13 assure the joint owners, if any, of such facilities, that TEP's duties and obligations shall not be
14 abrogated and that the rights of joint owners, such as those possessed by M-S-R in Service
15 Schedule D, shall not be impaired.

16 **IV. Due Process**

17 The most fundamental elements of due process are notice and an opportunity to be heard.
18 To date, the parties have not been granted either of these to any meaningful extent. The
19 magnitude of the transactions contemplated by TEP's divestiture plan and the Settlement
20 Agreement and the effect on M-S-R's rights, and presumably the rights of other parties, is so
21 great that due process requires that additional time to conduct discovery, file testimony and/or
22 comments and to prepare for the hearing be granted.

23 M-S-R has been denied due process in these proceedings. Although, M-S-R's request for
24 intervention was granted on October 8, 1998, it appears that the ACC's service list has not been
25 amended to include M-S-R and it appears that M-S-R is not and has not been served with certain
26 documents. The procedures adopted by the ACC also deny M-S-R due process.

27 ///

28 ///

1 **V. Request for Relief**

2 WHEREFORE, for the foregoing reasons, M-S-R Public Power Agency respectfully:

3 A. Objects to the Settlement Agreement and prays that the Commission not approve
4 the Settlement Agreement in its present form or unless and until the parties are provided sufficient
5 time to review, digest and comment on it or on any future draft of it.

6 B. Objects to the time deadlines and procedures established by the ACC for these
7 consolidated dockets and that, at a minimum, the parties be provided with an additional 90 days
8 to conduct discovery and prepare testimony and comments, and therefore also requests that the
9 hearing date be extended by at least 90 days.

10 C. Requests that the ACC schedule and conduct full hearings on the reasonableness
11 and public benefit of each element in the Settlement Agreement.

12 D. Requests the development of a sufficient record to determine that no contract
13 relating to the operation of existing generation and transmission in the State Arizona, nor any
14 contract relating to TEP's operations outside of the State of Arizona is impaired.

15 WHEREFORE, M-S-R reserves the right to file additional testimony and comment and
16 to appear at the hearing.

17 Respectfully submitted,

18
19 

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23 Secretary and General Counsel
24 M-S-R PUBLIC POWER AGENCY

25 November 30, 1998
26
27
28

Certificate of Service

I hereby certify that

(A) an original and ten (10) copies of the foregoing Application for Leave to Intervene were filed with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

-and-

(B) a copy of the foregoing Application for Leave to Intervene was sent to:

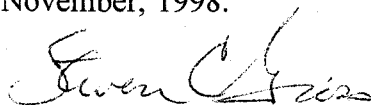
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1200 West Washington Street
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-and-

(C) a copy of the foregoing Application for Leave to Intervene was served via regular U.S. mail upon each person designated on the attached Official Service List in this proceeding.

Dated at Truckee, California this 30th day of November, 1998.



Steven C. Gross

OFFICIAL SERVICE LIST - DOCKET NO.: E-01933A-98-0471

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